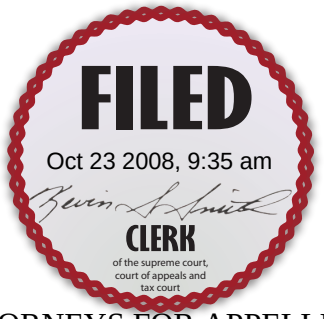

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IN THE
COURT OF APPEALS OF INDIANA

SHANE BEAL and THE LAW FIRM OF JOHNSON, BEAMAN, BRATCH, BEAL & WHITE, LLP,	)	
Appellants-Defendants,	)	
vs.	)	No. 27A05-0802-CV-78
EDWIN BLINN, JR.,	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE GRANT SUPERIOR COURT
The Honorable Frederick Spencer, Special Judge
Cause No. 27D03-0705-PL-197

October 23, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BROWN, Judge

In this interlocutory appeal, Shane Beal appeals the trial court's denial of his motion to dismiss a complaint filed by Edwin Blinn, Jr. Beal raises two issues, which we consolidate and restate as whether the trial court abused its discretion by denying his motion to dismiss. We affirm.

The relevant facts follow. Beal represented Blinn regarding a criminal matter but terminated his representation of Blinn on May 2, 2005. On April 26, 2007, Blinn filed a pro se complaint against Beal and the law firm of Johnson, Beaman, Bratch, Beal & White, LLP, ("Law Firm") for legal malpractice, but Blinn did not sign the complaint. On May 4, 2007, the Law Firm filed a motion to dismiss, alleging that the complaint had not been signed as required by Ind. Trial Rule 11(A). On May 10, 2007, Blinn filed an amended complaint signed by his wife, Lisa Blinn, as power of attorney. A general power of attorney was attached to the amended complaint, but the power of attorney did not give Lisa the power to sign court documents or engage in litigation on Blinn's behalf. The trial court then sua sponte stayed the proceedings until Blinn was released from prison or retained an attorney.

In October 2007, an attorney filed an appearance on behalf of Blinn. Beal then filed a motion to dismiss, alleging that the complaint was not signed, that the amended complaint was not properly signed, and that service of process had not been perfected upon Beal. The Law Firm also filed an amended motion to dismiss, alleging that the complaint was not signed, that the amended complaint was not properly signed, and that the statute of limitations had run as a result of the failure to file a properly signed complaint. After Blinn filed a response brief, Beal filed a reply, arguing that service of

process had not been perfected because the complaint and amended complaint were nullities. After a hearing, the trial court denied the motions to dismiss and granted Blinn ten days to file an amended complaint. Beal filed a motion to certify the trial court's order for interlocutory appeal, which the trial court granted. We accepted jurisdiction of the appeal pursuant to Ind. Appellate Rule 14(B).

The issue on appeal is whether the trial court abused its discretion by denying the motion to dismiss filed by Beal.[1] We review a trial court's order on a motion to dismiss for an abuse of discretion. Shelton v. Wick, 715 N.E.2d 890, 893 (Ind. Ct. App. 1999), trans. denied. We will find an abuse of discretion if the trial court's decision is "clearly against the logic and effect of the facts and circumstances before the court, or where the trial court has misinterpreted the law." Id.

Beal argues that the trial court should have dismissed Blinn's action pursuant to Ind. Trial Rule 11(A), which provides:

> Every pleading or motion of a party represented by an attorney shall be signed by at least one [1] attorney of record in his individual name, whose address, telephone number, and attorney number shall be stated, except that this provision shall not apply to pleadings and motions made and transcribed at the trial or a hearing before the judge and received by him in such form. A party who is not represented by an attorney shall sign his pleading and state his address. Except when specifically required by rule, pleadings or motions need not be verified or accompanied by affidavit. . . . The signature of an attorney constitutes a certificate by him that he has read the pleadings; that to the best of his knowledge, information, and belief, there is good ground to support it; and that it is not interposed for delay. *If a pleading or motion is not signed* or is signed with intent to defeat the purpose of the rule, *it may be stricken as sham and false and the action may proceed as though the pleading had not been served.* For a wilful violation

[1] The Law Firm did not file an appellants' brief in this matter.

> of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.

(emphasis added).

We recently addressed this same issue in Turner v. Franklin County, 889 N.E.2d 903 (Ind. Ct. App. 2008). There, Turner's complaint was not signed by her counsel due to either human error or a computer error in the program used to affix his signature to documents. 889 N.E.2d at 904. The trial court denied her motion to amend the complaint and dismissed her action because the statute of limitations had run. Id. at 904-905. We noted that "[b]ecause the complaint was not signed, under Rule 11(A), the complaint '*may* be stricken as sham and false and the action may proceed as though the pleading had not been served.'" Id. at 906. "The term 'may' ordinarily indicates a permissive condition and discretion." Id. (quoting Schoemer v. Hanes & Assoc., Inc., 693 N.E.2d 1333, 1340 (Ind. Ct. App. 1998)).

We also noted that the Indiana Supreme Court has held that the rules of trial procedure "are intended to standardize the practice within the court, facilitate the effective flow of information, and enable the court to rule on the merits of the case." Id. at 905 (quoting S.T. v. State, 764 N.E.2d 632, 635 (Ind. 2002)). "As a general proposition, . . . all litigants, as well as the court, are bound by the rules." Id. However, a court should not blindly adhere to all of its rules. Id.

> Although our procedural rules are extremely important, it must be kept in mind that they are merely a means for achieving the ultimate end of orderly and speedy justice. We must examine our technical rules closely when it appears that invoking them would defeat justice; otherwise we become slaves to the technicalities themselves and they acquire the position of being the ends instead of the means.

Id. (quoting Am. States Ins. Co. v. State ex rel. Jennings, 258 Ind. 637, 640, 283 N.E.2d 529, 531 (1972)). Certainly, the orderly procedure of our judicial system calls for adherence to rules designed to achieve that goal. Id. (citing Soft Water Util., Inc. v. Le Fevre, 261 Ind. 260, 269, 301 N.E.2d 745, 750 (1973)). However, "we should never ignore the plain fact that the consequence of strict adherence to procedural rules may occasionally defeat rather than promote the ends of justice." Id. Although Indiana does not require trial courts to impose lesser sanctions before applying the ultimate sanctions of default judgment or dismissal, Lee v. Friedman, 637 N.E.2d 1318, 1320-1321 (Ind. Ct. App. 1994), we view dismissals with disfavor, and dismissals are considered extreme remedies that should be granted only under limited circumstances. 889 N.E.2d at 905 (citing Beemer v. Elskens, 677 N.E.2d 1117, 1119 (Ind. Ct. App. 1997), reh'g denied, trans. denied).

Relying upon Rueth Dev. Co., v. Muenich, 816 N.E.2d 880 (Ind. Ct. App. 2004), trans. denied, and Christian Bus. Phone Book, Inc. v. Indianapolis Jewish Cmty. Relations Council, 576 N.E.2d 1276, 1277 (Ind. Ct. App. 1991), we concluded that the trial court abused its discretion by striking Turner's complaint and by dismissing her action. Id. at 907-908. Specifically, the dismissal of Turner's action was an extreme remedy for the mistake of Turner's counsel, and the record revealed no undue delay, bad faith or dilatory motive on Turner's part and no repeated failure to cure the deficiency.

Id. We also held that, under Ind. Trial Rule 15(C), the amended complaint then would relate back to the date of the original complaint.[2] Id. at 908.

Similarly, here, dismissal of Blinn's complaint would be an extreme remedy for his failure to sign the complaint. The record reveals no undue delay, bad faith or dilatory motive on Blinn's part and no repeated failure to cure the deficiency, other than his attempt to assign power of attorney to his wife to file an amended complaint. Under these circumstances, we conclude that the trial court did not abuse its discretion by denying Beal's motion to dismiss.[3] Further, the trial court properly allowed Blinn to file an amended complaint, which would relate back to April 26, 2007, and would be within the statute of limitations.

For the foregoing reasons, we affirm the trial court's denial of the motion to dismiss filed by Beal.

Affirmed.

BAKER, C. J. and MATHIAS, J. concur

[2] Ind. Trial Rule 15(C) provides, in part: "Whenever the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading, the amendment relates back to the date of the original pleading."

[3] Beal also argues that Blinn did not perfect service of process on him because the complaint and amended complaint were "nullities." Appellants' Brief at 13. Having concluded that the trial court did not abuse its discretion by allowing Blinn to amend his complaint, which relates back to the date of the original complaint under Ind. Trial Rule 12(C), we also conclude that Beal's service of process argument fails.